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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,186	12/06/2006	Yasuhiro Matsubara	MATSUBARA=2	7247
1444 7590 12/23/2009 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			EXAMINER KRUER, KEVIN R	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/23/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,186	<b>Applicant(s)</b> MATSUBARA ET AL.	
	<b>Examiner</b> KEVIN R. KRUER	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 7-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/17/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 4 and 7-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/15/2009.

Applicant's election with traverse of Group I in the reply filed on 10/15/2009 is acknowledged. The traversal is on the ground(s) that the invention of claims 7-12 is sufficiently tied to the elected invention. This is not found persuasive because "sufficiently tied" is not the legally basis for determining whether claims are drawn to patentably distinct inventions

The requirement is still deemed proper and is therefore made FINAL.

***.Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

3. The information disclosure statement filed 4/17/2006 has been fully considered. An initialed copy of said IDS is enclosed herein.

***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 28. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply

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to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:
  30. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamaki (US 6,099,924) in view of WO97/11847 (herein referred to as Donnellan).

Nakamaki teaches a laminate comprising a metal base and a polyester composition. The polyester composition may comprise a multi-layer structure having a thickness of 2-100um (col 16, lines 27+). The underlying resin layer should comprise 4-96% of the thickness (col 16, lines 28+) and comprises a blend (col 16, lines 16+) which has a melt tension of 0.2 to 1.5grams (col 11, lines 16+). Said thickness and melt tension is understood to be sufficiently specific to anticipate the ranges of claim 3. The outer layer comprises a higher Tg material (col 16, lines 16+) with a viscosity of up to 1.5 (col 13, lines 3+). The film may be unoriented (col 17, lines 4+) and the resulting film has uniform film thickness (col 5, lines 48+)-herein understood to be sufficiently specific to anticipate the unevenness of claim 2.

Nakamaki does not teach that the underlying layer should comprise a pigment. However, Donnellan teaches a multilayer polyester laminate comprising a core layer and an outer layer which are attached to a metal sheet for can production (abstract). Donnellan teaches white appearance is sometimes desired in cans (page 1, lines 5+) and that in such circumstances the core should comprise white pigment (page 1, lines

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15+) in order to prevent excessive die/punch wear and scoring of the resulting surface (page 1, lines 10+). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add white pigment to the underlying resin layer of Nakamaki in order to give a white appearance while reducing wear and scoring issues.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamaki (US 6,099,924) in view of WO97/11847 (herein referred to as Donnellan), as applied to claims 1-3 and 6 above, and further in view of Kimura et al (US 6,610,378)

Nakamaki in view of Donnellan is relied upon as above. Nakamaki teaches the viscosity of the outer layer may be up to 1.5 and that melt tension increases as viscosity increases. Furthermore, Kimura teaches that higher viscosity polyesters have higher impact resistance (col 2, lines 48+). Thus, it would have been obvious to utilize a high viscosity polyester in the outer layer of the laminate taught in Nakamaki in order to improve the impact resistance of the laminate. As the viscosity of the polyester is optimized, the melt tension will also be inherently optimized

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN R. KRUEER whose telephone number is (571)272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin R Kruer/  
Primary Examiner, Art Unit 1794